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CENTRAL FAX CENTER****NOV 08 2004****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****In re United States Patent of:****Patentee: Michael MEZEI et al.****Patent No.: 4,937,078****Date Issued: June 26, 1990****Title: LIPOSOMAL LOCAL  
ANESTHETIC AND  
ANALGESIC PRODUCTS****Docket No.: 4237-103****Customer No.: 23448****Art Group: 1502****Confirmation No.: 3802****FACSIMILE TRANSMISSION CERTIFICATE****ATTN: Office of Petitions (Unit 4700)****Fax No. (703) 872-9306**

I hereby certify that this document is being filed in the United States Patent and Trademark Office, via facsimile transmission to Mail Stop Petition, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on November 6, 2004, to United States Patent and Trademark Office facsimile transmission number (703) 872-9306.

**2****Number of Pages (including cover)**  
**Candace White****November 8, 2004****Date**

**REQUEST CONCERNING AVAILABILITY FOR COPYING OF FILE HISTORY  
OF U.S. PATENT NO. 4,937,078, THE PATENT-IN-SUIT IN BIOZONE  
LABORATORIES, INC., et al. v. RIVER'S EDGE PHARMACEUTICALS, LLC, et  
al. (CASE NO. 04-60218 FILED OCTOBER 5, 2004 IN U.S. DISTRICT COURT,  
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION)**

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**Sir/Madam:**

As counsel for defendant Harmony Labs, Inc. in the subject litigation filed October 5, 2004, we ordered on October 6, 2004 a copy of the file history of U.S. Patent No. 4,937,078 through the File History Data Center of MicroPatent LLC, but were informed that the file of this U.S. patent was transferred to the Office of Petitions on August 2, 2004 due to filing by persons unknown of a petition on July 7, 2004, and that the file history of this patent, including the newly filed petition, was currently not available to the public.

We thereupon filed a Status Inquiry on October 7, 2004 with the PTO, citing the provision of 37 C.F.R. §1.11 requiring that "all papers relating to the file of... a patent... are open to inspection by the public."

We requested the Office to advise us on the current status of this patent and the availability of the file history of this patent for public inspection, consistent with the provisions of 37 C.F.R. §1.11, but to date there has been no response to this request.

The interests of our client are severely impacted by the unavailability of this file, since we are unable to assess the effect of prosecution history on the construction and scope of the claims of the patent in suit. I therefore request that the appropriate Petitions Examiner having custody of the file history of this patent contact me at (919) 419-9350 to advise me about (i) why the file is being withheld in violation of 37 CFR 1.11, and (ii) what action or procedure is necessary to secure the file for copying by MicroPatent LLC.

Respectfully submitted,



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Attorney for Harmony Labs, Inc.

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cc: Jonathon W. Dudas, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL  
PROPERTY AND DIRECTOR OF THE USPTO